

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

John Doe, Jack Doe, Jason Doe, Joseph Doe
and James Doe, individually, and on behalf of
all others similarly situated; the Episcopal
Diocese of Olympia, and the Council on
American Islamic Relations-Washington,

Plaintiffs,

v.

Donald Trump, President of The United States;
U.S. Department of State; Rex Tillerson,
Secretary of State; U.S. Department of
Homeland Security; John Kelly, Secretary of
Homeland Security; U.S. Customs and Border
Protection; Kevin McAleenan, Acting
Commissioner of U.S. Customs and Border
Protection; and Michele James, Field Director
of the Seattle Field Office of U.S. Customs and
Border Protection,¹

Defendants.

No. 2:17-cv-00178-JLR

**STIPULATION AND ~~PROPOSED~~
ORDER TO LIFT STAY OF
PROCEEDINGS AND PERMIT
PLAINTIFFS TO FILE A THIRD
AMENDED COMPLAINT**

NOTING DATE: NOVEMBER 2, 2017

Plaintiffs and Defendants, through their respective undersigned counsel, hereby state the
following:

¹ John Kelly is no longer Secretary of Homeland Security. The appropriate change will be made if Plaintiffs are
allowed to file a Third Amended Complaint.

1 1. Plaintiffs currently have pending a Second Amended Class Action Complaint for
2 Declaratory and Injunctive Relief contesting Executive Order 13,780, titled "Protecting the
3 Nation from Foreign Terrorist Entry into the United States" ("EO-2"), *see* 82 Fed. Reg. 13,209
4 (Mar. 6, 2017), which this Court previously stayed on May 30, 2017, pursuant to a stipulation of
5 the parties. ECF No. 34.

6
7 2. In a joint status report to the Court dated July 14, 2017, the parties agreed that in
8 light of the proceedings in the Supreme Court in two other cases challenging EO-2, the stay of
9 the case should remain in place. The parties also agreed that "should circumstances change such
10 that lifting the stay is warranted, any party may move to lift the stay." ECF No. 38.

11 3. On October 10, 2017, the Supreme Court dismissed *IRAP* as moot and directed
12 the Fourth Circuit to vacate its opinion because there was no longer a live controversy as the
13 only section of EO-2 enjoined in *IRAP* had "expired by its own terms on September 24, 2017."
14 *Trump v. IRAP*, __ S. Ct. __, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017). Similarly, on
15 October 24, 2017, the Supreme Court dismissed *Hawaii* as moot and directed the Ninth Circuit
16 to vacate its opinion as the "provisions of the Order have 'expired by [their] own terms.'" *Trump*
17 *v. Hawaii*, __ S. Ct. __, No. 16-1540, 2017 WL 4782860, at *1 (U.S. Oct. 24, 2017).

18
19 4. On September 24, 2017, the President issued a Presidential Proclamation titled
20 "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United
21 States by Terrorists or Other Public-Safety Threats." 82 Fed. Reg. 45,161 (Sept. 27, 2017)
22 ("Proclamation").

23
24 5. On October 17, 2017, the District Courts of Hawaii and Maryland issued orders
25 preliminarily enjoining certain provisions of the Proclamation nationwide. *Hawaii v. Trump*, __
26 F. Supp. 3d __, No. 17-00050, 2017 WL 4639560 (D. Haw. Oct. 17, 2017) (granting TRO); *Int'l*

1 *Refugee Assistance Project v. Trump*, __ F. Supp. 3d __, Nos. 18-0361, 17-2921, 17-2629 (D.
2 Md. Oct. 17, 2017) (granting preliminary injunction); *see Hawaii v. Trump*, No. 1:17-cv-00050-
3 DKW-KSC, ECF No. 390 (D. Haw. Oct. 20, 2017) (converting TRO into preliminary
4 injunction).

5
6 6. On October 23, 2017, the Secretary of State, Acting Secretary of Homeland
7 Security, and Director of National Intelligence issued a Memorandum to the President titled
8 "Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities"
9 ("October 23 Agency Memo"). On October 24, 2017, the President issued Executive Order
10 13,815, titled "Resuming the United States Refugee Admissions Program with Enhanced Vetting
11 Capabilities." 82 Fed. Reg. 50,055 (Oct. 27, 2017) ("October 24 Executive Order").

12
13 7. Plaintiffs seek to lift the stay of the proceedings in this case to amend their
14 complaint to add allegations regarding the Proclamation, the October 24 Executive Order, and
15 the October 23 Agency Memo. Plaintiffs also intend to file a motion for a preliminary injunction
16 challenging the portions of the October 23 Agency Memo relating to the derivative refugee
17 admissions process.

18
19 8. Plaintiffs will not seek to enjoin the Proclamation at this time due to the already
20 pending challenges in *Hawaii* and *IRAP*.

21
22 9. The parties have agreed to brief Plaintiffs' forthcoming motion for a preliminary
23 injunction on the schedule proposed below.

24 Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs
25 and Defendants, subject to the Court's approval, that:
26

STIPULATION TO LIFT STAY
AND FILE A THIRD
AMENDED COMPLAINT
(2:17-cv-00178-JLR) - 3

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1 A. The stay of the proceedings shall be lifted to allow Plaintiffs to file an amended
2 complaint addressing the Proclamation, the October 24 Executive Order, and the October 23
3 Agency Memo.

4 B. As Defendants have not yet filed a responsive pleading to Plaintiffs' Second
5 Amended Complaint and do not oppose allowing Plaintiffs to file an amended complaint,
6 Plaintiffs shall be granted leave to file a third amended complaint.
7

8 C. Plaintiffs shall be allowed to file a motion for a preliminary injunction
9 challenging the portions of the October 23 Agency Memo relating to the derivative refugee
10 admissions process.

11 D. The schedule for amending the complaint and briefing of the motion for a
12 preliminary injunction will be as follows:
13

- 14 1. Plaintiffs shall file their Third Amended Complaint and Motion for a
Preliminary Injunction by 5 p.m. PT on Monday, November 6, 2017;
- 15 2. Defendants' deadline to respond to the Third Amended Complaint will be
16 extended until after Plaintiffs' preliminary injunction motion is resolved
with the parties to confer at a later date upon a schedule;
- 17 3. Defendants shall file a response to the Motion for a Preliminary Injunction
18 by 5 p.m. PT on Wednesday, November 16, 2017;
- 19 4. Plaintiffs shall file a reply brief by 5 p.m. PT on Wednesday, November 22,
20 2017; and
- 21 5. Argument shall be heard at the Court's convenience during the week of
22 December 4, but in no event sooner than November 29.

23
24 DATED this 2nd day of November, 2017.
25
26

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11 **ORDER**

12 PURSUANT TO STIPULATION, IT IS SO ORDERED, except that the hearing on
13 on Plaintiffs' motion for a preliminary injunction shall be held on
14 Monday, December 11, 2017, at 1:30 p.m. (P.S.T.).

15 Date: 2ND November 2017

16 By: 

17 JAMES L. ROBART

18 United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that, on November 2, 2017, a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 2nd day of November, 2017.

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